

BEFORE THE COMMISSIONER OF LABOR AND INDUSTRY  
STATE OF MONTANA

IN THE MATTER OF UNIT CLARIFICATION NO. 5-86

HARLEM EDUCATION ASSOCIATION	)	
MONTANA EDUCATION ASSOCIATION	)	
	)	
Petitioner,	)	FINDINGS OF FACT;
	)	CONCLUSIONS OF LAW;
vs.	)	AND
	)	RECOMMENDED ORDER
HARLEM ELEMENTARY AND HIGH	)	
SCHOOL DISTRICT NO. 12	)	
	)	
Respondent.	)	

\* \* \* \* \*

On July 25, 1986, the Petitioner, Harlem Education Association, Montana Education Association, filed a Petition for Unit Clarification with this Board. The Petitioner requests the Board to clarify the bargaining unit of certified personnel in Harlem Elementary and High School District No. 12 to include the position of school nurse.

The Respondent, Harlem Elementary and High School District No. 12, contends that the position of school nurse would be appropriately included in an existing bargaining unit consisting of non-certified personnel.

A formal hearing in this matter was conducted September 23, 1986, in the Council Chambers, Harlem City Hall, Harlem, Montana. The formal hearing was conducted under authority of Section 39-31-207 MCA and in accordance with the Montana Administrative Procedure Act (Title 2, Chapter 4, MCA). Emilie Loring, HILLEY & LORING, P.C., Great Falls, Montana represented the Petitioner. The Respondent was represented by Roger Ranta, Superintendent, Harlem Public Schools.

ISSUE

Whether the school nurse position should be included in the existing bargaining unit comprised of certified

1 personnel or the existing bargaining unit comprised of  
2 non-certified personnel.

3 FINDINGS OF FACT

4 After a thorough review of the record, including the  
5 testimony of witnesses, the demeanor of witnesses and the  
6 exhibits, I make the following Findings of Fact:

7 1. The existing bargaining unit comprised of certif-  
8 iced personnel is defined as all permanent full-time district  
9 employees whose positions require Class 1, 2, 4, or 5  
10 certificates or specialists certificates under applicable  
11 Montana law, excluding and excepting supervisors and manage-  
12 ment officials as defined by law. This bargaining unit  
13 represented by the Petitioner, has been in existence for  
14 some time; has been covered by collective bargaining agree-  
15 ments in previous years; and, is currently working under a  
16 collective bargaining agreement.

17 2. The existing bargaining unit comprised of non-  
18 certified personnel is defined as all non-certified staff  
19 (bus driver-custodian, maintenance engineer, aides, cooks,  
20 cook's helper, secretary and tutors) excluding all manager-  
21 ial and supervisory personnel. The Petitioner was certified  
22 as the exclusive collective bargaining representative for  
23 this unit by the Board of Personnel Appeals on June 19,  
24 1986. At date of formal hearing on this matter, Septem-  
25 ber 23, 1986, this bargaining unit had not yet secured its  
26 first collective bargaining agreement with the Respondent.

27 3. The school nurse position, presently occupied by  
28 Caryl Lockett, provides health care and education to the  
29 students. Duties include attending to injuries and illness-  
30 es and instructing students on general health, nutrition,  
31 sex and alcohol and drug abuse. Ms. Lockett prepares and  
32 gives classroom presentations, participates on "Child Study

Teams" (a team of professionals and a student's parent or guardian that plan a program for the development of a student), attends faculty meetings, and participates in parent-teacher conferences.

4. Ms. Lockett holds a Masters Degree plus 25 credits, and a teaching certificate and is licensed as a Registered Nurse.

5. Hours worked by Ms. Lockett are identical to those worked by the certified employees. Both Ms. Lockett and the certified employees work 8 a.m. to 4 p.m. and work 187 days per year.

6. Non-certified employees prepare and submit time sheets. Neither Ms. Lockett nor certified employees submit time sheets.

7. Ms. Lockett's salary was determined by applying her years of experience on the salary matrix contained in the certified employees' collective bargaining agreement. Ms. Lockett's salary is similar to certified employees and nearly twice the salary earned by an average non-certified employee. Ms. Lockett and the certified employees earn monthly salaries whereas the non-certified are paid per hour worked.

8. Ms. Lockett participates in the Teachers' Retirement System as do the certified employees. The non-certified employees participate in the Public Employees Retirement System.

9. Ms. Lockett, the certified employees, and the non-certified employees have common supervision.

10. Ms. Lockett desires to be included in the bargaining unit comprised of certified employees. Duane Lavinder, President of the Harlem Education Association, MEA, NEA (certified employee bargaining unit) testified that the

1 certified employees desire to have Ms. Lockett's position of  
2 school nurse included in their unit.

3 DISCUSSION

4 Two bargaining units exist in the Harlem Elementary and  
5 High School District No. 12. One unit is comprised of  
6 certified employees, mainly teachers, and has been in  
7 existence for some time. The other unit comprised of  
8 non-certified employees came into existence June 19, 1986  
9 through certification by this Board. It is not clear why  
10 the position of school nurse was not addressed during the  
11 formation of these two bargaining units.

12 The Respondents argue that the position of school nurse  
13 should be included in the unit of non-certified employees.  
14 The Respondent's primary argument was that the school nurse  
15 position was more similar to the non-certified positions  
16 because neither had collectively bargained for wages, hours  
17 and working conditions. Respondent's argument is confusing  
18 in light of the fact that the unit of non-certified employ-  
19 ees had recently been designated as a bargaining unit and  
20 will be bargaining collectively for wages, hours, and  
21 working conditions. Any similarity between the school nurse  
22 position and the non-certified employees relating to the  
23 history of collective bargaining ended when the unit of  
24 non-certified employees was designated a collective bargain-  
25 ing unit by this Board.

26 Testimony indicated that the school nurse position was  
27 more similar to those positions in the unit comprised of  
28 certified employees in consideration of the factors con-  
29 tained in Section 39-31-202 MCA.

30 CONCLUSIONS OF LAW

31 The position of school nurse should be included with  
32 the unit comprised of certified employees.

1 RECOMMENDED ORDER

2 The position of school nurse shall be immediately  
3 included in the existing bargaining unit comprised of all  
4 permanent full-time district employees whose positions  
5 require Class 1, 2, 4, or 5 certificates or specialist's  
6 certificates under applicable Montana law, excluding and  
7 excepting supervisors and management officials as defined by  
8 law.

9 SPECIAL NOTE

10 Pursuant to ARM 24.26.684, the above RECOMMENDED ORDER  
11 shall become the FINAL ORDER of this Board unless written  
12 exceptions are filed within 20 days after service of these  
13 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER  
14 upon the parties.

15 DATED this 14<sup>th</sup> day of November, 1986.

16 BOARD OF PERSONNEL APPEALS

17  
18 By: Stan Gerke  
19 Stan Gerke  
Hearing Examiner

20 CERTIFICATE OF SERVICE

21 The undersigned does certify that a true and correct  
22 copy of this document was served upon the following on the  
14<sup>th</sup> day of November, 1986, postage paid and addressed as  
follows:

23 Jan Fandel-Houfek  
24 Montana Education Association  
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25 Great Falls, MT 59404

26 Roger A. Ranta, Superintendent  
27 Harlem Public Schools  
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